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## **Deadlocks of International Climate Policy – An Assessment of the Copenhagen Climate Summit**

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# Abstract

This article analyses the negotiations on the future of the international climate regime at the United Nations Climate Summit in Copenhagen. It also discusses key issues in the ongoing business of implementing the Climate Convention and the Kyoto Protocol. The article lays out the main issues at stake in the negotiations, contrasts divergences in interests amongst negotiating parties, and summarises the results achieved in Copenhagen. The report discusses these results in detail and concludes with an outlook on how the challenges ahead could be overcome.

**Keywords:** climate change, climate policy, international climate negotiations, Kyoto Protocol, post-2012, Copenhagen summit, North-South relations

## 1. Introduction

Rarely had an event generated so much anticipation, and rarely had there been such a strong disappointment afterwards as at the 15<sup>th</sup> Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) and the 5<sup>th</sup> Conference of the Parties Serving as Meeting of the Parties to the Kyoto Protocol (CMP) in Copenhagen. According to the Bali Action Plan agreed at COP 13, the Copenhagen conference was to deliver a comprehensive agreement on the future of the climate regime. More than 100 Heads of State and Government had announced their attendance and more than 40,000 participants had registered their names.

However, while progress was made on details, positions on the major areas of controversy hardly converged. Eventually, the conference produced a “Copenhagen Accord” which is only a political declaration and not even this declaration was supported by all countries.

This article lays out the main developments in the negotiations about the future climate regime in Copenhagen and the contents of the Copenhagen Accord in chapters 2 and 3. In addition, the conference also had to deal with ongoing business related to the implementation of the UNFCCC and the Kyoto Protocol, which is discussed in chapter 4. The article concludes with an assessment of the conference’s outcome and a discussion of possible ways forward.

## 2. Negotiating the Future Climate Regime

### 2.1. Mitigation

According to the Bali Action Plan, the mitigation negotiations are proceeding under two tracks. First, the Ad Hoc Working Group on Further Commitments by Annex I Countries under the Kyoto Protocol (AWG-KP), which was established at CMP 1 in Montreal in 2005, is negotiating future emission targets for industrialised countries. Second, the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA) negotiates commitments for Annex I countries, including in particular those that have not ratified the Protocol—i.e. the USA—as well as “nationally appropriate mitigation actions” (NAMAs) of developing countries. The latter are to be supported by industrialised countries by technology, financing and capacity-building.

As has been the case since the start of the climate regime, negotiations up to and in Copenhagen continued to be plagued by finger pointing of who should go first. Non-Annex I countries point to the historical responsibility of Annex I countries for creating the climate problem and insist that industrialised countries should therefore take the lead in combating climate change. Annex I countries for their part point to rapidly rising emissions in the large rapidly industrializing countries and demand that they need to step up their efforts as well.

Apart from specific numbers and actions this controversy also revolves around the legal structure of the future agreement. Industrialised countries are, by varying degrees, in favour of a new universal framework that would supersede the Kyoto Protocol and cover all countries. Their argument is to make it easier to adequately cover all major emitting countries.

The USA have demanded a new structure that should be “very different” from the Kyoto Protocol. They reject the top-down approach favoured by the EU and developing countries, according to which first an overall mitigation target would be decided for industrialised countries, which would then be broken down to the individual countries according to their relative responsibility and capability. According to the US proposal, the international system would mainly be a collection of actions decided and implemented domestically.

Non-Annex I countries have denounced these positions as “killing Kyoto”. They see the Protocol as the only binding instrument for emission reductions the international community has so far been able to create and reject any suggestion to abandon it. They also see a continuation of the Protocol as a key prerequisite for maintaining the distinction between industrialised and developing countries.

As regards the level of ambition, the “ranges table” in the IPCC’s fourth assessment report has become a widely discussed benchmark. According to this table, in order to achieve stabilisation of atmospheric concentrations at 450 ppm CO<sub>2</sub>-eq., Annex I countries should collectively reduce their emissions by 25-40% by 2020 compared to 1990 levels, and non-Annex I countries should achieve a “substantial deviation from baseline”. The IPCC at the time did not quantify the deviation from baseline. A further article by the two main authors of the ranges table put the necessary deviation at 15-30% below business as usual.<sup>1</sup>

It needs to be noted, though, that many developing countries have disputed that the two ranges actually constitute an equitable effort sharing. Also, stabilisation at 450 ppm CO<sub>2</sub>-eq. gives only a 50% chance of meeting the 2°C target and hardly a chance of meeting the 1.5°C target demanded by the most vulnerable countries.

What industrialised countries had put on the table on the surface amounted to 11-19% below 1990 levels by 2020. However, these figures contained substantial loopholes. One is the presence of “hot air”, the surplus assigned amount units (AAUs) allocated to the Central and Eastern European economies in transition (EIT) under the Kyoto Protocol. Another loophole is the accounting rules for land use, land-use change and forestry (LULUCF), which effectively allow countries to hide emission increases. Taking all these loopholes into account, agreement at Copenhagen might well have resulted in an Annex I emissions increase of 2-8% compared to 1990 instead of a decrease.<sup>2</sup>

By contrast, the large non-Annex I countries have put substantial national action programmes on the table. According to the UNFCCC secretariat these would amount to a 28% deviation from BAU by 2020. Executive Secretary Yvo de Boer summarised in his final press conference in Copenhagen, pledges by non-Annex I countries are at the upper end of their “range” while Annex I countries are not even at the lower end of the range suggested by the IPCC.

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<sup>1</sup> M. den Elzen, M and N. Höhne, Reduction of Greenhouse Gas Emissions in Annex I and Non-Annex I Countries for Meeting Concentration Stabilisation Targets, An Editorial Comment, Climatic Change 2008 (91), p. 249.

<sup>2</sup> Sustainability Council of New Zealand, Loopholes Negate Pledges for Emission Reductions, [http://www.sustainabilitynz.org/news\\_item.asp?sID=205](http://www.sustainabilitynz.org/news_item.asp?sID=205).

## 2.2. Adaptation

The Copenhagen outcome on adaptation was supposed to include agreement on the institutional architecture of an effective and efficient adaptation framework, including provisions for an insurance and a rehabilitation (loss and damages) mechanism. In the end, the final text still included various options on most of the articles.<sup>3</sup>

Contentious issues included the integration of historic responsibility, climate insurance, an international mechanism to address loss and damages associated with climate change impacts in developing countries, especially those most vulnerable to climate change, as well as the focus on most vulnerable communities in addition to a focus on most vulnerable countries. In the LCA draft decision no reference is made to most vulnerable communities or historic responsibility as such, although option 1 on finance for adaptation refers to the “repayment of (...) climate debt”.<sup>4</sup> Insurance is included and the issue of establishing an international mechanism for loss and damages also remains in the text, even though in brackets.<sup>5</sup>

Overall, the AWG-LCA draft decision on adaptation includes a rather comprehensive list of what adaptation actions could include. However, it still has various options and brackets for most of its elements, missing a quantification of finance for adaptation and remaining vague on the institutional arrangements of an adaptation framework (or programme) and how to ensure that developed countries will deliver on their commitments (pending decisions on finance, technology and capacity building).

## 2.3. Financing

The issue of finance had been a low priority issue in the climate negotiations for a long time. Although Articles 4.3, 4, 5 of the UNFCCC and Article 11 of the Kyoto Protocol mandate Annex II parties to provide new and additional financial resources to developing countries in support of adaptation and mitigation, demands of developing countries for financial resources used to receive little attention. This has changed drastically since the adoption of the Bali Action Plan.

All negotiations relevant to the finance issue have focussed on addressing either one or both of two topics: mobilisation of the needed amount of financial resources and the institutional structure of funding.

On the mobilisation issue, a report on financial flows produced by the UNFCCC Secretariat put the financial resources needed in 2030 at \$130 billion for mitigation activities and several tens or possibly hundreds of billions for adaptation in developing countries only.<sup>6</sup> Other estimates come to similar or even higher results.<sup>7</sup> These figures go far beyond the total amount of resource flows provided by the existing mechanisms within the climate regime and the resources provided through the funds established outside of the Convention, most notably the World Bank’s Clean Technology Fund and the Strategic Climate Fund/Pilot Program for Climate Resilience.

Regarding the institutional structure of the funding body, developing countries and industrialised countries have still not overcome the conflict they have had since the establishment of the Global

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<sup>3</sup> Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention. Draft conclusions proposed by the Chair, Addendum, Draft decision -/CP.15, Enhanced action on adaptation, FCCC/AWGLCA/2009/L.7/Add.1, 15 December 2009.

<sup>4</sup> Id. at para 5.

<sup>5</sup> Id. at para 8.

<sup>6</sup> Investment and financial flows to address climate change: an update, Technical paper, FCCC/TP/2008/7, 26 November 2008.

<sup>7</sup> See e.g. Project Catalyst, Towards a Global Climate Agreement, Synthesis Briefing Paper June 2009, 2009; United Nations Department of Economic and Social Affairs, World Economic and Social Survey 2009, Promoting Development, Saving the Planet, 2009.

Environment Facility (GEF). Annex II Parties want to provide financing through bilateral or established multilateral channels such as the World Bank and the GEF. They argue that the expertise of these institutions should be used and point to the costs and effort involved with establishing new institutions. By contrast, developing countries perceive the existing institutions to be donor-dominated. They also complain that the procedures to access funding through these institutions require too much effort. They have therefore proposed to establish a new fund that would be fully accountable to the COP.

Significant progress only started when Hillary Clinton, US Secretary of State, announced in her speech in Copenhagen that “The United States is prepared to work with other countries toward a goal of jointly mobilising 100 billion dollars a year by 2020 to address the climate change needs of developing countries.”<sup>8</sup> This figure eventually made its way into the Copenhagen Accord (see below).

## **2.4. Technology**

Similar to the finance issue, technology transfer was treated as a low-priority topic in the climate negotiations until Bali, where it became one of the building blocks of the Bali Action Plan. Negotiations accelerated in 2009, leading to high expectations for Copenhagen to reach an agreement.

Even though a final agreement could not be reached in the end, most of the different options in the text could be deleted. According to the final LCA text,<sup>9</sup> a Technology Mechanism will be established. It will consist of a permanent Technology Executive Committee, which will replace the current Expert Group on Technology Transfer, and a Climate Technology Centre.

The Executive Committee will act as oversight board to the Mechanism, and will, inter alia, provide analysis on policy and technical issues, prepare criteria for support eligibility, consider actions to remove barriers to technology transfer, as well as monitor and assess technology-related action and support both for adaptation and mitigation. Decisions on guidance, membership and voting rules of the committee have not yet been taken.

The Technology Centre will be established with a view to improving the flow of information on available technologies, RD&D and transfer options. It will get support by regional units and by a climate technology network that is to be established to facilitate cooperation e.g. with national institutions or other international technology centres.

Disagreement remains on the relationship of the Mechanism with a possible future Financial Arrangement under the Convention (see section 2.3). The two options currently present in the text would give either the Mechanism or the Arrangement more leverage over funds.

Further disagreements revolve around intellectual property rights (IPRs). IPRs were firstly raised by China as one of the barriers preventing smooth technology transfer, which has since been taken up by many developing countries. By contrast, developed countries stress the necessity to keep strong IPR protection to encourage RD&D and deployment.

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<sup>8</sup> S. Goldenberg, US bids to break Copenhagen deadlock with support for \$100bn climate fund, guardian.co.uk, <http://www.gurdian.co.uk/environment/2009/dec/17/us-copenhagen-100bn-climate-fund>.

<sup>9</sup> Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, Draft conclusions proposed by the Chair, Addendum, Draft decision -/CP.15, Enhanced action on technology development and transfer, FCCC/AWGLCA/2009/L.7/Add.3, 15 December 2009.

## **2.5. Reducing Emissions from Deforestation and Forest Degradation (REDD)**

According to the Bali Action Plan, the future agreement is to include a policy framework for reducing emissions from deforestation and forest degradation (REDD). At Copenhagen, Parties *inter alia* discussed whether emission reference levels should be set nationally or sub-nationally. A sub-national approach would be implemented in a defined geographical area or at a project scale with individual ownership, while a national reference level would consist of a broader policy approach and create country ownership. The USA and others favour the former approach as it is open to wide participation and attractive to private investors, which could use carbon credits generated by individual project activities to offset domestic emissions. The EU and others, however, claim that this approach might encourage shifting the problem of deforestation into neighbouring areas, thereby creating a severe leakage problem. They argue that a national approach would allow for properly addressing the real drivers of deforestation and domestic leakage. However, no consensus could be reached.

Further controversies revolved around targets and goals for REDD plus, safeguards, and funding for REDD plus activities, especially for early actions. Prior to the conference, developing country Parties had shown willingness to commit to targets on deforestation under the condition that Annex I Parties provided adequate funding. At Copenhagen, however, no consensus could be achieved on the linkages between financial assistance and targets. One by one, both the mid-term target and the long-term goal on deforestation were deleted from the negotiation text. Furthermore, Parties discussed the content of and the way to refer to safeguards such as the rights of Indigenous Peoples.

The final draft of the AWG-LCA on REDD plus<sup>10</sup> contains a placeholder for a target as to when to halt deforestation and to the costs of achieving that goal. It also comprises a weak reference to safeguards like the rights of indigenous peoples and biodiversity. Further, the text—timidly—discourages the conversion of natural forests into plantations.

## **3. The Copenhagen Accord**

As it became apparent that the AWG negotiations were not going to bridge the divides, the Danish presidency launched a high-level “Friends of the Chair” group in parallel to the UNFCCC process. This group consisted of about 30 countries who were mostly represented by their Heads of State and Government. As this process was separate from the UNFCCC process and took place completely behind closed doors there are only partial accounts of what actually happened.<sup>11</sup>

At 3 am on Saturday, Danish Prime Minister Rasmussen re-opened the COP plenary and explained that he had consulted with leaders and mobilised support for an accord. This announcement provoked a barrage of objections from developing countries. The objections related to both the process and the content. On the process, developing countries complained about the intransparency and lack of respect for the UN process. On content, especially SIDS and LDCs attacked the accord as much too weak.

The debate dragged on until Saturday afternoon. In the end, it was not possible to formally adopt the Accord. Instead, the COP was only able to agree on “taking note of” the Copenhagen Accord (CA).

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<sup>10</sup> Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention. Draft conclusions proposed by the Chair, Addendum, Draft decision -/CP.15, Policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries, FCCC/AWGLCA/2009/L.7/Add.6, 15 December 2009.

<sup>11</sup> One very comprehensive account is given by B. Müller, Copenhagen 2009, Failure or final wake-up call for our leaders?, 2010, [www.oxfordenergy.org/pdfs/EV49.pdf](http://www.oxfordenergy.org/pdfs/EV49.pdf).

On substance, the CA includes a reference to the 2°C target<sup>12</sup> and a call for review in 2015 which would include consideration of the 1.5°C target, a concession to the most vulnerable countries.<sup>13</sup>

The CA does not contain any mid-term or long-term emission targets, neither for countries nor globally. Instead, the CA initially contained two empty appendices. Annex I countries were to inscribe emission targets for 2020 into Appendix I by 31 January. Non-Annex I countries, except LDCs and SIDS, were to inscribe nationally appropriate mitigation actions in Appendix II, also by 31 January.

On adaptation, the CA agrees that “enhanced action and international cooperation on adaptation is urgently required” and “that developed countries shall provide adequate, predictable and sustainable financial resources, technology and capacity building to support the implementation of adaptation action in developing countries”.<sup>14</sup>

On financing, the CA foresees \$30 billion of “new and additional resources” for the period 2010-2012 as collective commitment by developed countries “with balanced allocation between adaptation and mitigation”.<sup>15</sup> In addition, industrialised countries commit to a goal of mobilising jointly \$100 billion a year by 2020 to meet the needs of developing countries “in the context of meaningful mitigation actions and transparency on implementation.” The funding is supposed to come “from a wide variety of sources, public and private, bilateral and multilateral, including alternative sources of finance.”<sup>16</sup>

The CA also establishes a “Copenhagen Green Climate Fund” and a “Technology Mechanism”. However, the CA contains no details on their implementation.<sup>17</sup>

Initially, there was no clarity on the function of the CA for the further development of the climate regime. Some observers thought that the CA represented a fundamental “reset” of the climate regime. They posited that the CA was going to be the main future framework, that it would potentially be developed further outside the UNFCCC and that the UNFCCC would be relegated to the function of a notary. However, various countries such as the BASIC countries have by now decidedly taken the position that the CA should serve merely as input to the AWG negotiations.<sup>18</sup>

The CA and the AWG texts would then serve as complementary documents. The AWG texts have progressed considerably on the implementation details but agreement on the fundamental questions has so far been impossible. By contrast, the CA addresses some fundamental issues but has next to no details on implementation. It will therefore now fall to the AWG-LCA to fill in these details based on the current negotiation texts.

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<sup>12</sup> Report of the Conference of the Parties on its fifteenth session, held in Copenhagen from 7 to 19 December 2009, Addendum, Part Two: Action taken by the Conference of the Parties at its fifteenth session, Decision 2/CP.15, Copenhagen Accord, FCCC/CP/2009/11/Add.1, 30 March 2010, para. 1.

<sup>13</sup> Id. at para. 12.

<sup>14</sup> Id. at para. 3.

<sup>15</sup> Id. at para. 8.

<sup>16</sup> Id.

<sup>17</sup> Id. at paras. 10f.

<sup>18</sup> Joint Statement issued at the conclusion of the Second Meeting of Ministers of BASIC Group, New Delhi, <http://www.hindu.com/nic/2010draft.htm>.



## 4. Ongoing Business

### 4.1. Adaptation

The Adaptation Fund Board presented its progress report<sup>19</sup> to the CMP plenary, highlighting three main actions taken during the reporting period to operationalise the Adaptation Fund:

1. Adoption of policies and guidelines for accessing funds;
2. capitalisation of the Adaptation Trust Fund through monetisation of Certified Emission Reductions (CERs) started in May 2009. They estimated that up to 2012 at the very most USD 500 million could be monetised, meaning that the fund will need resources in addition to CER revenues; and
3. decision to accept Germany's offer to confer legal capacity on and host the Adaptation Fund Board. Once legal capacity has been conferred to the Adaptation Fund Board—after finalisation of the national parliamentary process in Germany, which is expected to take place before the end of 2010—the Adaptation Fund Board will finally be able to enter into funding agreements to start concrete projects or programmes in developing countries—nine years after establishment of the fund had been agreed at COP 6bis in Bonn.

### 4.2. Financing

The topic of financing was taken up not only as one of the building blocks under the AWG-LCA, but also relating to the implementation of the existing mechanisms. Parties addressed the fourth review of the financial mechanism, the report of the GEF to the COP and guidance to the GEF from the COP under the Convention, the LDC fund, and the report from the Adaptation Fund Board (see above).

The controversies around the fourth review of the Convention's financial mechanisms were essentially the same ones as under the AWG-LCA. While industrialised countries stressed that they have provided new and additional funding for global environmental benefits to developing countries, developing countries argued that the support has been insufficient to cover the increasing agenda of the Global Environment Facility as agreed upon under the conventions served by the GEF. In the end, the whole decision text was bracketed and forwarded to COP 16.<sup>20</sup>

### 4.3. Technology

The Expert Group on Technology Transfer (EGTT) presented its progress report for 2009 in the plenary.<sup>21</sup> The report referred especially to the EGTT's implementation of its work and on "Performance indicators to monitor and evaluate the effectiveness of the implementation of the technology transfer framework" it had drafted.<sup>22</sup> The EGTT has sought to develop and test 40 performance indicators for application to the framework by the SBI. The report finds that stakeholder involvement is key to the legitimacy of the undertaking and concedes that there is great need for capacity building to create appropriate monitoring and evaluation systems nationally and

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<sup>19</sup> Report of the Adaptation Fund Board, Note by the Chair of the Adaptation Fund Board, FCCC/KP/CMP/2009/ 14, 19 November 2009.

<sup>20</sup> Report of the Conference of the Parties on its fifteenth session, held in Copenhagen from 7 to 19 December 2009, Addendum, Part Two: Action taken by the Conference of the Parties at its fifteenth session, Decision 6/CP.15, Fourth review of the financial mechanism, FCCC/CP/2009/ 11/Add. 1, 30 March 2010.

<sup>21</sup> Report of the Expert Group on Technology Transfer for 2009, Note by the Chair of the Expert Group on Technology Transfer, FCCC/SB/2009/INF.6, 12 November 2009.

<sup>22</sup> Performance indicators to monitor and evaluate the effectiveness of the implementation of the technology transfer framework, Final report by the Chair of the Expert Group on Technology Transfer, FCCC/SB/2009/4, 11 November 2009.

internationally.

The GEF reported its progress on the implementation of the Poznan Strategic Programme on Technology Transfer. Under this programme, the GEF will help developing countries to conduct or update their technology needs assessments and will finance pilot projects for technology transfer. In 2009, the Programme focused on supporting developing countries with technology needs assessments and the build up of 14 proposals of technology transfer pilot projects.<sup>23</sup>

Parties welcomed EGTT's report on performance indicators and approved its rolling programme of work for 2010-2011. The EGTT will organize a regional workshop for Latin America and the Caribbean on preparing technology transfer projects for financing and develop an online training programme on preparing technology transfer projects. Furthermore, the group of experts will deal with how to facilitate collaborative R&D on environmentally sound technologies under the UNFCCC and how to engage the business community.<sup>24</sup>

#### **4.4. Flexible Mechanisms**

On the Clean Development Mechanism, developing countries once again stressed the importance of equitable regional distribution of CDM projects, especially concerning Africa. More than 3/4 of emission credits are generated by CDM projects in the three largest host countries China, India and Brazil. In the final CMP decision, it was decided, inter alia, to provide particular support for host countries with less than 10 registered projects.<sup>25</sup> Loans will be granted to pre-finance the development of projects, validation and the first verification. In addition, registration fees have to be paid only after the first issuance of credits.

As a further reform step, the CMP decided to introduce an appeals procedure against decisions of Designated Operational Entities (DOEs)—the entities charged with validating and verifying projects—and the CDM Executive Board (EB). In addition, the CMP assigned the EB to reinforce the monitoring of the DOEs' performance and publish relevant information. A further step to strengthen the environmental integrity of the CDM is the introduction of standardised baselines, i.e. the definition of benchmarks for specific project types. Their design, however, remains unclear. The SBSTA is to work on modalities and procedures for developing standardised baselines and report back to CMP 6.

The guidance on JI<sup>26</sup> adopted by the CMP is rather general. The CMP requested the Joint Implementation Supervisory Committee (JISC) to strengthen its relations with approval bodies, auditors and project developers, to clarify the profundity of project verifications by the certifiers and to report to the coming CMP on its experience with the mechanism.

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<sup>23</sup> Second interim report of the Global Environment Facility on the progress made in carrying out the Poznan strategic programme on technology transfer, FCCC/SBI/2009/10, 10 November 2009.

<sup>24</sup> Supra, note 10.

<sup>25</sup> Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its fifth session, held in Copenhagen from 4 to 14 December 2005, Addendum, Part Two: Action taken by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol at its fifth session, Decision 1/CMP.5, Further guidance relating to the clean development mechanism, FCCC/KP/CMP/2005/10/Add.1, 10 March 2006.

<sup>26</sup> Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its fifth session, held in Copenhagen from 4 to 14 December 2005, Addendum, Part Two: Action taken by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol at its fifth session, Decision 1/CMP.5, Guidance on the implementation of Article 17 of the Kyoto Protocol, FCCC/KP/CMP/2005/10/Add.1, 10 March 2006.

## 5. Assessing the Copenhagen Outcome – The World on a >3°C Trajectory

Viewed in a broader context, the road from Bali to Copenhagen has not been without its successes. In particular, the Copenhagen deadline injected a significant dynamic into national discussions. One country after the other elaborated its targets and actions and presented them to the international audience. This dynamic would hardly have happened without the Copenhagen deadline. In stark contrast, the formal outcome of Copenhagen is only a political declaration, and not even this declaration was supported by all countries.

55 countries met the 31 January deadline for inscribing targets and actions in the annexes in the CA. By mid-April 76 countries had made submissions. Content-wise most submissions did not deviate from the pledges made before Copenhagen. Canada weakened its pledge from -3% by 2020 to +3, while Iceland strengthened its pledge from -15% to -30% against 1990.<sup>27</sup>

Collectively, the pledges add up to much less than would be required to maintain a good chance of meeting the 2°C target, let alone the 1.5°C target. The “Climate Action Tracker” by Ecofys, Climate Analytics and the Potsdam Institute for Climate Impact Research concludes that current pledges would lead to a temperature increase of more than 3°C by 2100.<sup>28</sup>

Based on analysis by McKinsey, Project Catalyst gives very similar numbers. Project Catalyst also highlights that if emissions are not brought on a 2°C trajectory by 2020, it would hardly be possible to return to a 2°C trajectory post-2020. The main reason is that massive amounts of capital stock will be built and replaced until 2020. For example, more than half of the power supply required in 2020 has yet to be built. If these additions and replacements of existing stock are built using high emission technology, achieving the necessary reductions by 2030 would require abandoning huge amounts of capital stock before the end of its useful life.<sup>29</sup>

On finance, the Accord touches upon the two most critical issues, mobilisation of the needed amount of financial resources and an equitable and effective institutional structure of the funding mechanisms. However, details on “effective and efficient fund arrangements” are missing entirely in the Accord, as well as any attempt to quantify the finance that will be made available by when. Also, there is no clear language on whether this “new multilateral funding” will be truly additional to existing Official Development Assistance (ODA) commitments.

## 6. Negotiating in a Climate of Fear

The ultimate cause for the weak outcome of Copenhagen is easy to discern. There is an almost universally-held belief that protecting the climate is going to impose substantial economic costs, and that therefore this “burden” can only be taken up if shared equitably by all major emitters.

This fear of economic loss prevails even though various studies have shown that the risk of “carbon leakage” is actually much more moderate than assumed and that most industries should be able to

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<sup>27</sup> A list of all submissions is available at: Homepage UNFCCC, Copenhagen Accord, <http://unfccc.int/home/items/00000.php>.

<sup>28</sup> Homepage Climate Action Tracker, Detailed Information on Individual Country Pledges for Greenhouse Gas Emission Reductions, <http://www.climateactiontracker.org/>.

<sup>29</sup> Project Catalyst, Towards a Global Climate Agreement, Synthesis Briefing Paper June 2009, 2009.

adjust to strengthened climate policies without state support or protection from outside competitors.<sup>30</sup> It is apparently also unmoved by numerous studies showing that not only developing but also industrialised countries dispose of substantial “no regret” emission reduction potential, studies not only produced by environmental think tanks but also by more mainstream analysts such as McKinsey.<sup>31</sup>

Many are now asking whether a setting where more than 190 countries negotiate is actually up to the challenge of rapidly solving the climate problem. The critical point, however, is not so much the number of participants but rather the lack of political will. The last years have in fact seen quite a number of small-group discussions in the G8, G20 and the Major Economies Forum. Yet, these talks have been plagued by the same divisions as the UNFCCC negotiations.

A breakthrough will arguably only be achieved if one of the major economic powers breaks with the “burden” narrative and convinces itself that protecting the climate is in its own best interest irrespective of what anybody else is doing. As long as climate leadership is seen as a recipe for economic disaster, countries will never move up to the necessary level of ambition. By contrast, if one of the major economic powers decided to forge ahead and get serious about creating a low-carbon economy, it can be assumed that the other countries would quickly follow suit for fear of being left behind.

Due to its massive economic and technological potential, the USA would theoretically be the first candidate to take the lead on creating a low-carbon economy. However, even though much has moved under the Obama administration, the state of discussion in the USA is still years behind that in most other countries. The rest of the world might therefore want to consider whether the way forward should lead around rather than through the USA.

The second candidate for taking the lead is the EU. History shows that any major progress in the climate negotiations came about when the EU was able to form a “green coalition” with progressive developing countries and thus isolate the naysayers. The EU’s strategy in the run-up to Copenhagen was the exact opposite: The EU’s main priority seemed to be to create a united front with the other Annex I countries and in particular to get the USA on board. Crucially, this involved publicly abandoning the Kyoto Protocol in favour of a new universal framework that would bind all major emitters. With this move, the EU crossed the most important red line of developing countries, who now perceived the EU as having joined the camp of those who want to drastically weaken the legal status of industrialised countries’ commitments. At the same time, it was equally clear that the USA was not ready to commit to any system of binding numerical mitigation targets that would be similar to the Kyoto Protocol. A single universal framework could therefore only be weaker than Kyoto. In sum, the EU antagonised potential allies among developing countries without having any prospect of getting anything in return from the USA.

A key factor is that the enlarged EU with its now 27 member states is no longer the essentially Western European EU that secured the Berlin Mandate and rescued the Kyoto Protocol after the US defection. The new member states are much less wealthy than the old ones and to a certain extent it is understandable why countries such as Poland, which derives more than 90% of its electricity from coal, have difficulties with committing to aggressive mitigation actions. To be able to regain its former international stature, the EU will therefore probably need to work out a long-term internal effort sharing arrangement as the basis for presenting a united front internationally. As part of this, the economic powerhouses of Western Europe will probably need to offer the new members states substantial and reliable support for transitioning to a clean energy future.

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<sup>30</sup> See, e.g., Carbon Trust, Tackling carbon leakage. Sector-specific solutions for a world of unequal carbon prices, 2010; J.E. Bardoff, International Trade Law and the Economics of Climate Policy: Evaluating the Legality and Effectiveness of Proposals to Address Competitiveness and Leakage Concerns, Prepared for Brookings Forum, Climate Change, Trade and Competitiveness: Is a Collision Inevitable? 2008; J.-C. Hourcade, D. Demailly, K. Neuhoff, M. Sato, M. Grubb, F. Matthes, F.V. Graichen, Differentiation and Dynamics of EU-ETS Industrial Competitiveness Impacts, final report, 2007.

<sup>31</sup> See, e.g., Project Catalyst, Towards a Global Climate Agreement. Synthesis Briefing Paper June 2009.

A third possibility is that China will continue to accelerate its decarbonisation efforts and ultimately convince itself that meeting its development goals and controlling emissions are actually compatible. Already today, China has emerged as major player on the renewable energy scene. A recent report shows that Chinese investments in clean energy jumped by 50% in 2009 alone to reach \$34.6 billion, far more than any other G20 country and up from \$2.5 billion only 5 years ago.<sup>32</sup> Another recent study notes that clean energy will be one of the world's largest industries by 2020, accounting for as much as \$2.3 trillion—with China right in the middle of it.<sup>33</sup>

Also in the field of energy efficiency, China has been accelerating its efforts again since 2005, aiming at a 20% reduction of energy intensity per GDP in the period 2005-2010. China will continue its efficiency efforts in the next five-year-plan period (2011-2015). The Carnegie Endowment for International Peace notes regarding the much-maligned Chinese target to improve its carbon intensity by 40-45% by 2020: "No developing country in economic history—other than post-Mao China—has cut its energy-related greenhouse gas emissions growth so deeply for so long (...) The current energy intensity policy (...) can legitimately be described as severe, even draconian (...) The policy has forced closure of tens of thousands of factories, power plants, and production lines that failed to meet the standards."<sup>34</sup>

Currently, however, while wind mills are going up in China at record speed, so are coal power plants. The country already has one foot planted in the future, but its other foot remains rooted in the fossil past. But should the Chinese decide to put both feet on the path to the future, the enormous labour pool, low labour costs and rising technological capacity of this country of 1.3 billion people might make for bleak prospects for industrialised countries who failed to make use of their technological edge while they still had it.

## 7. Which Way Forward for International Climate Policy?

Clearly, Parties are not ready to agree on a comprehensive global framework to fight climate change. At the same time, the message from climate science is clear: action over the next years is crucial if there is to be any chance of keeping global warming below 2°C.

It may therefore be sensible to take a piecemeal approach to constructing the future climate regime and prioritise actions over form while the fundamentals of a comprehensive agreement are negotiated. COP 16/CMP 6 in Cancún should therefore adopt an interim framework that is capable of delivering immediate emission reductions and laying the groundwork for eventual adoption of a comprehensive treaty or treaties. Such a Cancún Plan of Action could have the following key planks: First, a firm mandate to negotiate a comprehensive treaty or treaties within a realistic timeframe, such as 2015, and second, an interim framework to cover the interval including the following elements:

- A firm commitment to agree on industrialised country targets for a five-year second commitment period under the Kyoto Protocol by COP 17 in 2011 at the latest. Preferably, industrialised countries should take the lead and agree on their targets at COP 16 already and most countries' level of ambition should be substantially strengthened.
- Integration of US climate legislation, which urgently needs to be passed before COP 16.

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<sup>32</sup> Pew Charitable Trusts, *Who's Winning the Clean Energy Race? Growth, Competition and Opportunity in the World's Largest Economies*, 2010.

<sup>33</sup> K. Gordon, J.L. Wong and JT McLain, *Out of the Running? How Germany, Spain, and China Are Seizing the Energy Opportunity and Why the United States Risks Getting Left Behind*, 2010.

<sup>34</sup> W. Chandler, *Memo to Copenhagen: Commentary is Misinformed—China's Commitment is Significant*, 2009, pp. 2, 4f.

- Transposition of the NAMAs notified under the CA into the UNFCCC process, with a firm commitment to develop a fully functional system for implementing these NAMAs, associated financial, technological and capacity building support by Annex I countries and MRV under the LCA track by COP 17 in 2011 at the latest. These would initially be adopted in the form of COP decisions, establishing the basis for working towards a treaty format by 2015
- Immediate agreement on finance and support for adaptation building on the Adaptation Fund

Continuation of the Kyoto Protocol is a fundamental condition of non-Annex I engagement, and this is a valid demand as Annex I countries have basically failed to do their homework for almost 20 years. When factoring out the countries of the former Eastern Bloc whose economies collapsed in the 1990s, emissions from industrialised countries actually increased by 12.8% between 1990 and 2007.<sup>35</sup> A demonstration by industrialised countries that they are finally prepared to actually take the lead is therefore a fundamental element for building the necessary trust that will be needed to eventually forge a comprehensive agreement. Moreover, non-Annex I countries have done what Annex I have demanded. They have stepped up and submitted credible mitigation targets and actions that are able to deliver substantial emission reductions.

The one actor capable of securing a second Kyoto commitment period is the EU. So far, the EU has been driven by fear that all the other Annex I countries might jump ship and leave the EU countries as the only ones who are regulated under the Protocol after 2012. But instead of being paralysed by the prospect of such a vicious circle dynamic, the EU should take up the challenge to rescue the Kyoto Protocol a second time and create a virtuous circle, securing Kyoto commitments from the other Annex I countries one after the other.

To regain its credibility, the EU should first step up its own target for 2020. Despite its claims to the contrary, even the conditional EU target of 30% never reflected its “fair share”. Most effort sharing proposals conclude that a “fair share” of the EU in the global effort to move to a 2°C trajectory would be a target of at least 35%.<sup>36</sup> Second, due to the impacts of the recession, the EU would have to work hard in order NOT to meet its unilateral 20% target.<sup>37</sup>

Furthermore, the EU will have to mend fences with developing countries. Apart from returning to the Kyoto framework and stepping up its own target this will crucially involve making good on its financial promises. In addition to actually delivering the money, this money should in fact be new and additional instead of simply being repurposed from development budgets. A major share of adaptation funding should be provided to the Adaptation Fund, which has the full backing of developing countries.

As for the LCA track, once the package approach is given up and the issue linkage with Annex I targets is removed, agreements might be found much more easily. For example, the facilitator of the REDD-plus negotiations recounts that agreement on REDD-plus was within reach in Copenhagen, but was held back by the controversies about the fundamentals of the new regime.<sup>38</sup>

As for the USA, the time for action is now. The mid-term election in November 2010 is currently expected to lead to Democratic losses or even an overall Republican victory, which would probably forestall US climate action for years to come. Leaders from the EU and other countries should therefore communicate directly to the Obama administration and members of Congress that passage of climate legislation in 2010 is of vital importance.

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<sup>35</sup> United Nations Framework Convention on Climate Change, Trends in aggregate greenhouse gas emissions, 1990-2007, [http://unfccc.int/ghg\\_data/ghg\\_data\\_unfccc/items/4146.php](http://unfccc.int/ghg_data/ghg_data_unfccc/items/4146.php).

<sup>36</sup> N. Höhne and C. Ellermann, The EU's emission reduction target, intended use of CDM and its +2°C target, 2008.

<sup>37</sup> S. de Bruyn, A. Markowska and M. Davidson, Why the EU could and should adopt higher greenhouse gas reduction targets, A review, 2010.

<sup>38</sup> T. La Vina, Ways Forward after Copenhagen: Reflections on the Climate Change Negotiating Process by the REDD-plus Facilitator, 2 February 2010, <http://www.field.org.uk/news/redd-plus-facilitator-tony-la-vi%C3%B1a-suggests-ways-forward-after-copenhagen>.

Evidently, such messages will be all the more credible the more they are backed up by commitments from the governments who send them. And it bears reminding that increasing numbers of citizens, states, cities and businesses are demanding that the USA should step up to the plate. If the other Annex I countries go ahead with a second Kyoto commitment period and non-Annex I countries go ahead with credibly implementing NAMAs, the USA might quickly find itself in a position of being the big laggard of international climate policy. It may be hoped that such a situation would be intolerable to the more progressive elements within the USA and help to create the political space that is needed to pass US climate legislation.